IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

CRP.No. 1203 of 1998(E)

AGAINST THE ORDER DATED 01/08/1997 IN IA 1115/95 IN LAR.166/1989 of ADDL.SUB COURT, ALAPPUZHA

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REVN. PETITIONER:

AMMINI AMMA, D/O.GOMATHY AMMA,
NALLU VEETTIL, MARARIKULAM SOUTH VILLAGE,
ALAPPUZHA.

BY ADV. DR.P.S.KRISHNA PILLAI

RESPONDENTS:

KERALA STATE REPRESENTED BY THE
DISTRICT COLLECTOR, ALAPPUZHA.

BY GOVERNMENT PLEADER SRI SHYSON P. MANGUZHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**P.R.RAMAN,J.**

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**C.R.P.NO.1203 OF 1998**

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**Dated this the 19th day of February, 2007**

**O R D E R**

This revision is filed challenging the order passed by the Additional Sub Court, Alappuzha in IA.No.1115/95 in LAR.No.166/89. There was an application filed seeking review of the order dismissing the Land Acquisition Reference. The learned Sub Judge dismissed the review application on two grounds; (i) that order 47 Rule 1 read with Section 151 of the Code of Civil Procedure will not apply to the Land Acquisition Reference and (ii) that the reference made by the District Collector and received by the Land Acquisition Court was beyond the period prescribed under Section 18 of the Land Acquisition Act. The learned counsel appearing on behalf of the petitioner

Sri P.S.Krishna Pillai assails both the grounds as contrary to law. As regards the statement of law that order 47 Rule I will not apply to the land acquisition proceedings, it has to be held that the said view expressed by the court below is contrary to the decision of the Division Bench in **State of Kerala v. Kunhammed Koya Haji (1970 K.L.T. 1065).** In that case a petition to review of an award was filed. The question arose as to whether such a petition is maintainable. It was held that there is no provision in the Land Acquisition Act which is in any way inconsistent with the provisions of Order 47 Rule 1 of the C.P.C.

2. As per Section 18 of the Land Acquisition Act, a party objecting to the award has to prefer an application before the District Collector within a period of six weeks from the date of the Collector's award,

in case he was present or represented before the Collector at the time of passing the award and in other case, within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever period shall first expire. There is no case for the respondents that the reference application was belated. On the other hand, the Collector himself referred the matter to the Land Acquisition Court. In this case the reference court dismissed the reference only on the ground that the reference was not received by that court within time. As a matter of fact, nowhere it is stated that reference as such should be made within six weeks. What is provided for is an application by the party before the District Collector; but it should be filed within six weeks' period as provided

under Section 18 as noted above. If so, the dismissal of the reference by the Land Acquisition Court is clearly illegal.

3. In the above circumstances, the order passed by the court below is liable to be set aside. I do so. As a matter of fact, this is a case where pursuant to the order passed by the Land Acquisition Court, petitioner moved an application under Section 28A wherein also the District Collector found that the earlier application was filed within time and therefore her remedy is to seek review of the order rejecting the earlier application. Therefore, it was noticed that there was some delay in filing the review.

4. Even though this is a petition filed under Section 115 of the C.P.C. and the proviso under Section 115 of the C.P.C. will apply, in order to prevent the miscarriage of

justice, this is a fit case where this Court exercises the power under Article 227 of the Constitution of India.

5. In the above circumstances, the revision is allowed. The Land Acquisition Court is directed to restore the reference on file and dispose of the same on merits, after hearing the parties.

The parties shall appear before the Land Acquisition Court on 5/3/2007.

**P.R.RAMAN,**
**Judge.**

kcv.

**P.R.RAMAN, J.**

**C.R.P.NO.1203 OF 1998**

**O R D E R**

**19th February, 2007**